



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 18, 2013

Ms. Janet L. Kellogg
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2013-22091

Dear Ms. Kellogg:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 508887 (THen10).

The Corpus Christi Police Department (the "department") received a request for information pertaining to a specified incident.¹ You claim the requested information is excepted from disclosure under sections 552.101, 552.108, 552.119, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the department's obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b) of the Government Code, the governmental body must ask for a decision from this office and state the exceptions to disclosure that apply within ten business days of receiving a request. *See* Gov't Code § 552.301(b). Further, pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving the request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply

¹As you did not submit a copy of the request, we take our description from your brief.

to which parts of the documents. *Id.* § 552.301(e). In this instance, you have provided two different dates as being the date the department received the instant request for information. Moreover, because the department has not submitted a copy of the original request for information, we cannot discern whether the request was dated or date-stamped. Accordingly, because of your conflicting representations, we are unable to determine whether the department requested a ruling from this office within ten business days of receiving the request for information. We therefore find the department has failed to establish that it complied with the requirements of section 552.301(b) in requesting a ruling from this office. Further, because the department has not submitted a copy of the original request for information, as required by section 552.301(e), we find the department failed to comply with the procedural requirements of section 552.301(e).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Although the department seeks to withhold the submitted information under section 552.108 of the Government Code, it is a discretionary exception to disclosure that protects a governmental body's interest and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). Accordingly, the department may not withhold any of the submitted information under section 552.108 of the Government Code. However, because sections 552.101, 552.117, 552.119, and 552.130 of the Government Code can provide compelling reasons to withhold information, we will consider the applicability of these exceptions to the information at issue.²

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, such as chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states, except as provided by subsection (c) or subsection (e), accident reports are privileged and confidential. Section 550.065(c)(4) provides for release of accident reports to a person who provides two of the following three pieces of

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. The submitted information contains a CR-3 Texas Peace Officer's Crash Report. Because you have not submitted a copy of the request for information, we cannot determine whether the requestor has provided the department with at least two of the three listed pieces of information and must rule conditionally. If the requestor has provided the department with at least two of the three listed pieces of information, the department must release the CR-3 crash report form we have marked pursuant to section 550.065(c)(4). If, however, the requestor has not provided the required information, the department must withhold the CR-3 crash report form we have marked under to section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code.

The department asserts the telephone number and address you have marked in the submitted police records are confidential under section 772.318 of the Health and Safety Code. We note this office issued Open Records Letter No. 2011-16393 (2011), a previous determination authorizing the department to withhold under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code, the originating telephone numbers and addresses of 9-1-1 callers furnished to the department by a 9-1-1 service supplier established in accordance with chapter 772 of the Health and Safety Code. Therefore, pursuant to Open Records Letter No. 2011-16393, the telephone number and address you have marked must be withheld under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

We note one of the submitted video recordings contains information subject to section 552.117(a)(2) of the Government Code. Section 552.117(a)(2) excepts from public disclosure the home address, home telephone number, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the

peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code. *See* Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, the department must withhold the information we have indicated under section 552.117(a)(2) of the Government Code.³

Section 552.119 of the Government Code provides, in relevant part:

(a) A photograph that depicts a peace officer as defined by Article 2.12, Code of Criminal Procedure, the release of which would endanger the life or physical safety of the officer, is excepted from [required public disclosure] unless:

- (1) the officer is under indictment or charged with an offense by information;
- (2) the officer is a party in a civil service hearing or a case in arbitration; or
- (3) the photograph is introduced as evidence in a judicial proceeding.

Id. § 552.119(a). Under section 552.119, a governmental body must demonstrate, if the information does not demonstrate on its face, that release of the photograph would endanger the life or physical safety of a peace officer. Upon review, we find you have failed to demonstrate, and it is not apparent from our review, how the release of the photographs at issue would endanger the life or physical safety of the officers at issue. Therefore, the department may not withhold any of the submitted photographs at issue under section 552.119 of the Government Code.

We note the department has redacted some motor vehicle record information from the submitted photographs pursuant to section 552.130 of the Government Code.⁴ You also mark information you seek to withhold under section 552.130 of the Government Code. Section 552.130(a) of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is

³We note a governmental body may withhold a peace officer's home address and telephone number, personal cellular telephone and pager numbers, social security number, and family member information under section 552.117(a)(2) without requesting a decision from this office. *See* Open Records Decision No. 670 (2001); Gov't Code § 552.147(b).

⁴Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

excepted from public release. *See id.* § 552.130(a). We note you have marked driver's license and motor vehicle record information belonging to a deceased individual in the submitted information. The purpose of section 552.130 is to protect the privacy interests of individuals. Because the right of privacy lapses at death, motor vehicle record information that pertains solely to deceased individuals may not be withheld under section 552.130. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145 (N.D. Tex. 1979); Attorney General Opinions JM-229 (1984), H-917 (1976); Open Records Decision No. 272 (1981). Thus, section 552.130 is not applicable to the deceased individual's driver's license information, which we have marked for release, and the department may not withhold it on that basis. Accordingly, with the exception of the information we have marked for release, the department must generally withhold the information you have marked, and the additional information we have marked and indicated, under section 552.130 of the Government Code. However, we note some of the motor vehicle record information at issue relates to a vehicle owned by the individual who is now deceased. If a living individual owns an interest in the vehicle, the department must withhold this information under section 552.130. If no living individual owns an interest in the vehicle, then the marked information relating to that vehicle is not excepted from disclosure and must be released.

In summary, unless the requestor has complied with the release provisions of section 550.065(c)(4) of the Transportation Code, the department must withhold the CR-3 crash report form we have marked under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code. Pursuant to Open Records Letter No. 2011-16393, the department must withhold the telephone number and address you have marked under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy, and the information we have indicated under section 552.117(a)(2) of the Government Code. With the exception of the information we have marked for release, the department must withhold the information you have marked, and the additional information we have marked and indicated, under section 552.130 of the Government Code. However, the information pertaining to the vehicle owned by the deceased individual may only be withheld if a living individual owns an interest in the vehicle. The department must release the remaining submitted information.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <http://www.texasattorneygeneral.gov/open/>

[orl_ruling_info.shtml](#), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/akg

Ref: ID# 508887

Enc. Submitted documents

c: Requestor
(w/o enclosures)